May 22, 2015

Honorable James M. Inhofe  
Chairman  
Committee on Environment and Public Works  
United State Senate  
Dirksen Senate Office Building, SD-410  
Washington, DC  20510

Honorable Barbara Boxer  
Ranking Member  
Committee on Environment and Public Works  
United State Senate  
Dirksen Senate Office Building, SD-410  
Washington, DC  20510

Dear Chairman Inhofe and Ranking Member Boxer:

As the Congress undertakes consideration of important surface transportation legislation, the Advisory Council on Historic Preservation (ACHP) wishes to offer its views on the critical intersection between the nation’s transportation infrastructure and our cultural patrimony. We submit these comments in furtherance of our fundamental statutory charge as an independent federal agency to “advise the President and the Congress on matters relating to historic preservation.” (54 U.S.C. §304102)

Our comments focus on the Administration’s proposed bill, Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act, known as the GROW AMERICA Act. While the proposal has not been formally introduced in the Congress, it is an important component of the dialogue on surface transportation legislation and frames several issues of significant import for the nation’s heritage.

At the outset, we commend the Administration for developing a proposal that will provide increased and stable funding for surface transportation. Taking appropriate measures to avoid the insolvency of the Highway Trust Fund is important to all of America. Likewise, helping States and local governments to fund highway, transit, and rail projects in which Federal assistance often closes financial gaps is critical to our economy and population.

We were pleased that the GROW AMERICA Act includes an increase in the TIGER competitive grant program by 100 percent (approximately $7.5 billion over six years) and $6 billion in the highway and transit competitive grant program entitled, Fixing and Accelerating Surface Transportation (FAST). These programs will provide grants for historic preservation activities related to transportation projects located in urban, rural, and tribal communities. Ongoing interagency collaboration regarding port expansion, rail improvements, and maintenance and rehabilitation of highways, and planning and environmental reviews will assist in timely project delivery.

While the ACHP supports the programs advanced by the GROW AMERICA Act, we have serious concerns about certain provisions that would modify existing processes for addressing transportation project impacts on historic properties. Section 1005 would fundamentally alter the protections for historic properties that have been in place for nearly 50 years. It would permit the outcomes reached through the review process established by Section 106 of the National Historic Preservation Act (54 U.S.C. §306108) to substitute for the more rigorous requirements of Section 4(f) of the Department of Transportation Act (49 U.S.C. §303).
Section 106 establishes a procedural review process, while Section 4(f) mandates a substantive standard that requires the Secretary of Transportation to determine that there is “no feasible and prudent alternative” to a transportation project adversely affecting historic properties and to further undertake “all possible planning to minimize harm” to such properties.

For nearly five decades, these processes have acted in harmony to accommodate important historic preservation values with the delivery of essential transportation projects. The rationale put forward for altering the current system is that the processes are duplicative and create inefficiencies. The ACHP’s experience, based on its fundamental statutory responsibility to oversee the Section 106 process, does not support that assessment and conclusion. To the contrary, our close working relationship over the years with the Federal Highway Administration (FHWA), which is the agency most experienced in dealing with Section 4(f) and Section 106 reviews, has confirmed the importance of these two mutually-reinforcing processes in reaching good historic preservation outcomes, and has demonstrated that they can work harmoniously and efficiently.

There is no question that opportunities exist to improve the interface between Section 106 and Section 4(f), especially as new and expanded funding programs are put into place that deal with the nation’s rail and transit infrastructure. We learned from our collaboration with FHWA that the administrative tools provided by the ACHP’s regulations implementing Section 106 offer opportunities to better coordinate the two processes and gain efficiencies. Likewise, in March 2013, the Report to Congress entitled, *Streamlining Compliance with Section 4(f) of the Department of Transportation Act and Section 106 of the National Historic Preservation Act, in accordance with the Passenger Rail Investment and Improvement Act of 2008 (PL. 100–432)*, included recommendations for administrative actions that would improve both environmental reviews. Subsequent discussions initiated in the fall of 2014 between the ACHP and DOT, along with the Federal Railroad Administration and Federal Transit Administration, have explored the needs specific to these modes and the utility of the existing administrative options to address these issues, as recommended in the congressionally-mandated report.

These collaborative efforts are progressing well. The transportation agencies have been able to identify several areas where process improvements would be helpful and the ACHP, working with its preservation partners, has offered specific solutions that can be achieved in a reasonable time frame. It is worth noting that we have concluded that Section 1005 will not resolve the operational issues that the DOT agencies have identified.

The ACHP would also like to draw the committee’s attention to Section 1006 of the GROW AMERICA Act, which would exempt “Improvements to, or the maintenance, rehabilitation, or operation of railroad or rail transit lines or elements thereof” from the provisions of Section 4(f). This provision would leave in place the requirements of Section 106 for any federal grant that would affect properties listed on or eligible for the National Register of Historic Places.

The ACHP believes this is a useful provision and would support it if two points were addressed. First, the term “improvements” is unclear and could include the demolition and replacement of existing historic resources. We believe this should be defined in the accompanying report to make clear that the term does not include demolition and replacement. Second, Section 1006 as currently drafted excludes railroad stations from its provisions. We believe that exclusion should be expanded to include rail facilities that have been designated National Historic Landmarks or National Civil Engineering Landmarks. This would be a small expansion in number, but would ensure that properties of exceptional historic significance in America’s railroad history, such as the Eads Bridge across the Mississippi River or the Moffat Tunnel through the Rocky Mountains, are given the highest protection of federal historic preservation law.
The ACHP appreciates this opportunity to comment on this important legislative issue and would welcome the opportunity to elaborate on any point we have raised. John Fowler, the ACHP’s Executive Director, can be reached at 202-517-0200 or jfowler@achp.gov.

Sincerely yours,

Milford Wayne Donaldson, FAIA
Chairman